

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (01/24/2012 - 01/27/2012 Session)

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11-7109	Briefs	CRIMINAL: Whether Defendant's waiver of his right to appeal his sentence precludes his appeal of district court's order denying the Government's Rule 35(b) motion.
US v. Kerney Thornsby (Berger)		
11-4041	Briefs	SENTENCING: Whether this court's mandate in earlier appeal precluded district court from re-evaluating Guidelines calculations on remand; other issues.
US v. Alfredo Susi (Whitney)		
10-5080	Briefs	CRIMINAL: Whether sufficient evidence supported defendant's convictions for making a false claim of U.S. citizenship and aggravated identity theft.
US v. Humberto Castillo-Pena (Lee)		
10-2424	Briefs	TORT LAW: Whether the district court erred in granting summary judgment on claims of conspiracy, tortious interference with business expectancy, and deprivation of due process.
Adam Shrivinski v. United States Coast Guard (Trenga)		

PANEL I
Red Courtroom (Room 412)
9:30 a.m.

Tuesday, January 24, 2012

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10-2295	Briefs	COMMERCIAL LAW: Multiple issues arising from residential foreclosure.
Rex Gilbert, Jr. v. Residential Funding LLC (Dever)		
11-4256	Briefs	CRIMINAL LAW: Whether North Carolina conviction for abduction of children is aggravated felony under USSG section 2L1.2(b)(1)(C).
US v. Joaquin Delangel-Velasco (Schroeder)		
09-5037	Briefs	FOURTH AMENDMENT: Whether the district court erred in denying motions to suppress; other issues.
US v. Brit McCullum (Whitney)		
10-4545	Briefs	CRIMINAL: Whether the district court committed clear error in applying four-level enhancement pursuant to U.S. Sentencing Guidelines Manual section 3B1.1(a) (2009); other issues.
US v. Jerry Barnes (Fox)		

PANEL II
Butzner En Banc Courtroom 201
9:30 a.m.

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11-4190	Briefs	SUPERVISED RELEASE: Whether district court improperly relied on hearsay evidence in finding violation of terms of supervised release; notice issues.
US v. Anthony Doswell (Nickerson)		
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11-4323	Briefs	SENTENCING: Standard of review; whether terrorism enhancement properly applied; consideration of statutory sentencing factors.
US v. Ali Chandia (Hilton)		
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05-1620	Briefs	BLACK LUNG: Whether ALJ's reliance on preamble to black lung regulations to discredit physicians' opinions violated Administrative Procedure Act.
Harman Mining Co v. DOWCP Associations: 11-1450		
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11-1046	Briefs	CIVIL: Whether the district court erred in granting defendants' motion to dismiss for lack of subject matter jurisdiction.
Timothy Holloway v. Pagan River Dockside (Miller)		

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Tan Courtroom (Room 223)
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11-1568 In Re: Kolon Industries Inc. Associations: 11-1570	Briefs	FEDERAL PROCEDURE: Whether the district court abused its discretion in modifying protective order in misappropriation of trade secrets case; other issues.
10-1723 Paula Angles v. Dollar Tree Stores, Inc. (Friedman)	Briefs	CIVIL PROCEDURE: Whether appellants' motion to amend its complaint in a different action to add a Title VII claim, which was denied, tolled the statute of limitations; related issues.
10-5008 US v. Mantel Mubdi (Voorhees)	Briefs	CRIMINAL: Whether district court erred in denying motion to suppress evidence seized during traffic stop.
08-2065 US v. James Edgar Munson (Mullen) Associations: 08-4326, 08-2159	Briefs	CIVIL: Propriety of grant of summary judgment to Government in civil forfeiture proceeding and denial of motion for reconsideration

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Tweed Courtroom (Room 414-D)
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10-4831	Briefs	CONSTITUTIONAL LAW: Whether 7 U.S.C. Section 2156 violates the Due Process Clause because the elements of proof differ in different states; other issues.
US v. Scott Lawson		
Associations: 10-4882, 10-4845, 10-4870, 10-4846, 10-4870, 10-4845, 10-4841, 10-4870, 10-4841, 10-4870		

11-1593	Briefs	ADA: Whether this EEOC enforcement action under the ADA is barred by charging party's assertion of disability in application for Social Security Disability Insurance.
EEOC v. Greater Baltimore Medical Ctr (Bennett)		

10-2437	Briefs	CIVIL: Whether district court correctly held that liability waivers barred claims of defamation, breach of contract, and unfair and deceptive trade practices; other issues.
Jeremy Mayfield v. NASCAR (Mullen)		

11-1139	Briefs	CIVIL: Whether the district court properly determined the accrual date of plaintiffs' claims pursuant to the West Virginia Consumer Credit and Protection Act, W. Va. Code section 46A-5-101(1).
Cathy Delebreau v. Bayview Loan Servicing, (Goodwin)		

PANEL V
Gold Courtroom (Room 348)
9:30 a.m.

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10-1215	Briefs	INSURANCE: Whether insurer was liable to builder under commercial liability policy for alleged construction defects in residence.
Jessco v. Builders Mutual Insurance (Duffy)		
10-2327	Briefs	BLACK LUNG: Whether ALJ properly granted petition for modification; whether substantial evidence supports ALJs denial of living miner and survivor benefits.
Westmoreland Coal Company v. Maeann		
10-4848	Briefs	CONSTITUTIONAL LAW: Whether 7 U.S.C. Section 2156 was a proper exercise of Congressional power under the Commerce Clause; other issues.
US v. Jeffrey Gibert (Currie)		
Associations: 10-4851, 10-4852, 10-4875, 10-4904		
10-2444	Briefs	DEBT COLLECTION: Are debt collection provisions of Maryland statute preempted under federal law; other issues.
Donna Epps v. JP Morgan Chase Bank, N.A. (Nickerson)		

PANEL I
Red Courtroom (Room 412)
9:30 a.m.

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11-1029	Briefs	TAX: Whether tax court correctly concluded that beach club net income was taxable business income unrelated to petitioner's tax-exempt purpose.
Ocean Pines Association v. Commissioner of		
11-1218	Briefs	CIVIL: Whether court erred in dismissing plaintiff's Title VII gender discrimination claim alleging male employees were not subject to termination under the same conditions as plaintiff; other issues.
Karla Gerner v. County of Chesterfield, VA (Hudson)		
10-2258	Briefs	CIVIL: Whether the district court abused its discretion in awarding attorney's fees under the Fair Debt Collection Practices Act.
Danielle Randle v. H&P Capital, Incorporated (Payne)		
11-4151	Briefs	CRIMINAL: Whether the district court committed harmless error by excluding testimony as inadmissible hearsay; other issues.
US v. Samir Ibisevic (Ellis)		

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Butzner En Banc Courtroom 201
9:30 a.m.

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11-4061	Briefs	CRIMINAL: Whether prior convictions were based on conduct that was committed on different occasions for purpose of Armed Career Criminal Act designation; other issues.
US v. Walter Boykin, Jr. (Dever)		
11-1222	Briefs	CIVIL: Whether wages, salary and benefits exclusion in insurance contract relieved company of duty to defend insured in lawsuit.
Robert Graham v. National Union Fire (Faber)		
10-1711	Briefs	CIVIL: Whether the Americans with Disabilities Act and the Rehabilitation Act apply to police investigation of alleged criminal activity.
Robert Seremeth, Jr. v. Board of County (Legg)		
11-1184	Briefs	ENVIRONMENTAL LAW: Whether the district court erred in upholding Army Corps of Engineers decision to issue finding of no significant impact regarding project; other issues.
Friends of Back Bay v. Army Corps of Eng (Morgan)		

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Tan Courtroom (Room 223)
9:30 a.m.

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11-1259	Briefs	MORTGAGE LOANS: Challenges to dismissal of amended complaints alleging violations of Maryland Secondary Mortgage Loan Law, filed against assignees of originating lenders based on violations by originating lenders.
Dennis McLeod v. PB Investment Corporation (Motz)		
Associations: 11-1304, 11-1266, 11-1272, 11-1276, 11-1277, 11-1270, 11-1281, 11-1284, 11-1289, 11-1291, 11-1292, 11-1295, 11-1297, 11-		

07-4948	Briefs	SENTENCING: Whether Hudson's convictions for aggravated fleeing or eluding in violation of Fla. Stat. 316.1935(2) (1999), qualified as violent felonies under 18 U.S.C. Section 924(e) (2006).
US v. Tory Lamont Hudson (Harwell)		

11-1239	Briefs	TAX LAW: Did the tax court err in denying the Government of the Virgin Islands' motion to intervene; other issues.
Emmit McHenry v. Commissioner of IRS Associations: 11-1366		

10-2355	Briefs	CIVIL: Whether district court properly applied discretionary function exception in dismissing FTCA complaint.
Michael Holbrook v. US (Copenhaver)		

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10-1664	Briefs	CIVIL: Whether the holding of Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc., 546 U.S. 394 (2006), bars this appeal.
Belk, Incorporated v. Meyer Corporation, U.S. (Cayer)		
10-2316	Briefs	TITLE VII: Whether plaintiff suffered a tangible employment action; whether employer was entitled to affirmative defense; other issues.
Carla Dulaney v. Packaging Corporation of (Turk)		
11-4358	Briefs	CRIMINAL: Whether holding of Tapia v. United States, 131 S. Ct. 2382, applies to term of imprisonment imposed upon revocation of supervised release.
US v. James Novak (Fox)		
11-1044	Briefs	CIVIL: Whether district court correctly determined that Hood's complaint failed to state a substantive due process claim for violation of bodily integrity; other issues.
Christina Hood v. Suffolk City School Board (Jackson)		

PANEL V
Gold Courtroom (Room 348)
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10-1738	Briefs	TORT LAW: Challenge to liability and damages verdicts, including challenge based upon qualified immunity defense to section 1983 claim.
Shirley Gregg v. Jon Ham (Currie)		
10-4064	Briefs	CRIMINAL: Whether statements made by a child abuse victim to an investigating social worker were "testimonial" such that their admission at trial violated the Confrontation Clause; related evidentiary issues.
US v. Roberto Deleon (Bennett)		
11-2000	Briefs	INJUNCTION: Whether the district court abused its discretion in denying motion to enjoin implementation of 2011 – 2012 student assignment plan asserted to violate prior desegregation orders.
Ronda Everett v. Pitt County Bd of Education (Howard)		
11-6747	Briefs	HABEAS: Whether district court erred in finding that holding in Padilla v. Kentucky, 130 S. Ct. 1473 (2010), is not retroactively applicable to cases on collateral review.
US v. Shahzad Mathur (Boyle)		

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Red Courtroom (Room 412)
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10-2241	Briefs	MEDICARE: Whether the decisions of the Medicare Appeals Council denying coverage for BIO-1000 medical device are arbitrary and capricious.
Monique Almy v. Kathleen Sebelius (Bennett)		

11-1206	Briefs	Civil: Whether amendments violated ERISA's anti-cutback rule, notice requirements; claims for breach of fiduciary duty, estoppel; other issues.
Noorali Savani v. Washington Safety Mgt. (Seymour)		

10-5162	Briefs	CRIMINAL: Whether the district court erred in denying motion to suppress; other issues.
US v. Fredrick McBride (Duffy)		

11-4623	Briefs	CRIMINAL LAW: Whether district court erred in granting defendant's motion to suppress.
US v. Corey Moore (Williams)		

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10-2381	Briefs	TELECOMMUNICATIONS ACT: Was the board's decision to deny application for special exception permit under 47 U.S.C. Section 332(c)(7)(B)(iii) supported by substantial evidence; other issues.
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11-1078	Briefs	CIVIL: Whether parties' contract was ambiguous, thereby precluding summary judgment as to whether plaintiff was entitled to three-percent success fee; other issues.
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10-2242	Briefs	CIVIL: Whether sufficient evidence existed to prove malicious prosecution under Virginia law; whether punitive and compensatory damage awards were supported by the evidence.
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08-2243	Briefs	CIVIL RICO: Whether the district court erred in overturning jury verdicts on rescission and restitution claim.

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Tan Courtroom (Room 223)
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11-1151	Briefs	TELECOMMUNICATIONS: Whether FCC acted arbitrarily in reversing decision of arbitrators regarding alleged discrimination in making cable carriage decisions; whether findings were supported by substantial evidence.
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11-4369	Briefs	SENTENCING: Whether sentence is unreasonable where district court did not separately explain reasons for imposing consecutive-rather than concurrent-sentence.
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09-2102	Briefs	BANKRUPTCY: Whether bankruptcy court erred in confirming Chapter 13 plan where debtor intended to surrender collateral post-confirmation.
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11-4049	Briefs	CRIMINAL LAW: Whether district court erred in determining that prior conviction for breaking and entering restaurant was not a violent felony.

PANEL IV
Tweed Courtroom (Room 414-D)
9:30 a.m.

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10-2211	Briefs	ARBITRATION LAW: Is arbitration agreement applicable to non-signatory defendants; is agreement enforceable under United Nations Convention and U.S. law; other issues.
Potenciano Aggarao, Jr. v. Mol Ship (Blake)		
10-2114	Briefs	FEDERAL PROCEDURE: Challenges to district court judgment based upon requirements of F.R.Civ.P.52; other issues.
David Schwartz v. Rent A Wreck of America Inc (Messitte)		
11-1561	Briefs	CIVIL: Whether the district court had jurisdiction to act on parties' post-judgment motions and whether the court abused its discretion in resolving those motions.
David Schwartz v. Rent A Wreck of America Inc (Messitte)		
10-2405	Briefs	ERISA: Whether court should enforce insurance policy's contractual limitations period despite striking accrual provision to which the limitations period is tied.
Benjamin Belrose v. Hartford Life & Accident (Brinkema)		

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[Briefs](#)

REHEARING EN BANC.

Suhail Al Shimari v. CACI International, Inc.
(Lee)

Associations: [10-1891](#), 10-1921

EN BANC PANEL
Butzner En Banc Courtroom 201
8:30 a.m.

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10-4746	Briefs	CRIMINAL: Whether the Virginia statute criminalizing impersonation of a police officer violates the First Amendment; other issues.
US v. Douglas Chappell (Brinkema)		

10-6462	Briefs	CIVIL: Whether the court has jurisdiction to review the district court's remand order and, if so, whether the district court properly remanded the case to state court based on the fact plaintiff is a "three-striker" under the PLRA.
Billy Lisenby, Jr. v. Kenneth Lear (Norton)		

PANEL I
Red Courtroom (Room 412)
After en banc session

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11-4053 [Briefs](#)
US v. Juan Llamas
(Whitney)

SENTENCING: Whether the district court adequately considered the 18 U.S.C. section 3553(a) factors and appellant's argument; whether the sentence is substantively reasonable.

11-4177 [Briefs](#)
US v. Michael Stinson
(Whitney)

CRIMINAL: Whether warrantless search of defendant and his vehicle violated Fourth Amendment.

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Butzner En Banc Courtroom 201
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10-5099 [Briefs](#)
US v. Frank Rogers
(Wooten)

SENTENCING: Whether district court erred by imposing certain conditions of supervised release.

10-4057 [Briefs](#)
US v. William Cloud
(Whitney)

CRIMINAL: Whether money laundering offense merged with false statements, wire fraud, mail fraud, and bank fraud offenses under United States v. Santos, 553 U.S. 507 (2008); other issues.

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10-4895 [Briefs](#)
US v. Curtis Edmonds
(Fox)

CRIMINAL: Whether the evidence was sufficient to support conspiracy conviction; other issues.

10-4375 [Briefs](#)
US v. Antonio Argueta
(Chasanow)

CRIMINAL PROCEDURE: Whether court erred permitting witness to testify under a pseudonym; related issues.

PANEL IV
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10-6962 [Briefs](#)
US v. Samuel Conrad, III
(Jones)

CRIMINAL: Whether the district court committed Baker error in granting Conrad conditional release without previously committing him pursuant to 18 U.S.C. section 4243(f) (2006); other issues.

11-4056 [Briefs](#)
US v. Chong Lam
(Spencer)

CRIMINAL: Sufficiency of evidence to support convictions; jury instruction regarding anti-dissection rule; definition of substantially indistinguishable.

Associations: 11-4081

PANEL V
Gold Courtroom (Room 348)
After en banc session

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